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Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVII] Trivandrum, Tuesday 6th July 1982 / 15th Ashadha 1904 (Saka) [No. 505

NOTICE

UNDER SECTION 9 (5) OF THE KERALA LAND ACQUISITION ACT, 1961 (ACT 21 OF 1962)

No. A4.182/74. *3rd July* 1982.

Notice is hereby given that the Government intend to take possession of the land mentioned in the list below, which is required for a public purpose under the Kerala Land Acquisition Act, 1961 (Act 21 of 1962). All persons interested in the land are required to appear in person or by authorised agent on the date, time and place noted below and to state/put in a statement in writing signed by themselves or their agents showing the nature of their respective interests in the land and the amount and particulars of their claim to compensation for such interests in the land and their objections, if any, to the measurements made under section 8 of the Act.

Note:—If the persons interested refuse to make a claim to compensation or omit without sufficient reasons, to make such claim, the amount to be awarded by the Court, in the event of a reference being made to it on application made by them shall, in no case exceed the amount awarded by the Collector under Section 11 of the Act.

താഴെ കൊടുത്തിരിക്കുന്ന ലിസ്റ്റിൽ പറഞ്ഞിട്ടുള്ളതും, 1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് (1962-ലെ 21·ാം ആക്റ്റ്) പ്രകാരം ഒരു പൊതു കാര്യത്തിന് ആവശ്യമായിട്ടുള്ളതുമായ ഭൂമി കൈവശപ്പെടുത്തുവാൻ ഗവൺമെന്റുദ്ദേശിക്കുന്നുവെന്ന് ഇതിനാൽ നോട്ടീസ് നൽകിയിരിക്കുന്നു. പ്രസ്തുത ഭൂമിയിൽ അവകാശബന്ധമുള്ള എല്ലാപേരും നേരിട്ടോ അധികൃത ഏജന്റുമൂലമോ താഴെ പറയുന്ന തീയതിയിലും സ്ഥലത്തും സമയത്തും

ഹാജരാകുകയും, ഭൂമിയിൽ അവരോരോരുത്തർക്കുമുള്ള അവകാശബന്ധങ്ങളുടെ സ്വഭാവവും ഭൂമിയിൽ അങ്ങനെയുള്ള അവകാശബന്ധങ്ങൾ സംബന്ധിച്ചിടത്തോളം നഷ്ടപ്രതിഫലത്തിന് അവർക്കുള്ള തേർച്ചയുടെ തുകയും വിവരങ്ങളും ആക്റ്റ് 8-ാം വകുപ്പു പ്രകാരം എടുത്തിട്ടുള്ള അളവു സംബന്ധിച്ച് വല്ല ആക്ഷേപവുമുണ്ടെങ്കിൽ അതും ഏതാണെന്ന് കാണിച്ചു കൊണ്ട് പ്രസ്താവന ചെയ്യുകയും അവരോ അവരുടെ ഏജൻറുമാരോ എഴുതി ഒപ്പിട്ട ഒരു സ്റ്റേറ്റുമെൻറ് സമർപ്പിക്കുകയും ചെയ്യണമെന്ന് അവരോട് ആവശ്യപ്പെടുന്നു.

കുറിപ്പ്:—അവകാശബന്ധമുള്ളവർ നഷ്ടപ്രതിഫലത്തിന് തേർച്ച ചെയ്യാൻ കൂട്ടാക്കാതിരിക്കുകയോ മതിയായ കാരണമില്ലാതെ അങ്ങനെ തേർച്ച ചെയ്യാൻ വീഴ്ച ചെയ്യുകയോ ചെയ്യുന്ന പക്ഷം അവരുടെ അപേക്ഷയിൻമേൽ കോടതിക്ക് റഫറൻസ് അയയ്ക്കുന്ന സംഗതിയിൽ കോടതി വിധിച്ചുകൊടുക്കേണ്ട തുക യാതൊരു സംഗതിയിലും ആക്റ്റ് 11-ാം വകുപ്പു പ്രകാരം കളക്ടർ വിധിച്ചു കൊടുക്കുന്ന തുകയിൽ കവിയാൻ പാടില്ലാത്തതാകുന്നു.

Date, time and place of appearance—on 22-7-1982 at 11 a. m. before the Special Tahsildar LA (N. H.) Quilon.

Particulars of lands

District—Quilon

Taluk—Karunagapally

Village—Panmana

Block No. 12 Chavara Unit.

Survey No.—4655/3

Description—Wet reclaimed

Extent—39 *Sq.m.*

Quilon.

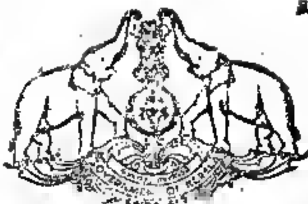
(Sd.)

Special Tahsildar for (L.A), N. H.

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Reg. No. KL/TV(N)/12

Government of Kerala
1982



KERALA GAZETTE

SUPPLEMENTS

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Kerala Gazette No. 27 dated 6th July 1982.
PART I



GOVERNMENT OF KERALA

Abstract

KERALA STATE JAWAHAR BALBHAVAN AND DISTRICT LEVEL BALBHAVAN—ENTRUSTMENT OF AUDIT OF ACCOUNTS TO THE LOCAL FUND EXAMINER—ORDERS ISSUED

GENERAL ADMINISTRATION (MISC) DEPARTMENT

G.O. (P) No. 175/82/GAD. *Dated, Trivandrum,* 21*st June* 1982.

Read:—1. G. O. Ms. No. 181/74/PD dated 25-7-1974.

2. Letter No. LF-18312/M3/81/dated 4-11-1981 from the Examiner of Local Fund Accounts, Trivandrum.

3. Letter No. PL (4) 117/82/L. Dis. dated 27-1-1982 from the Director of Public Instruction, Trivandrum.

ORDER

The audit of accounts of the Kerala State Jawahar Balbhavan/District Level Balbhavans is being done by Chartered Accountants appointed by the Managing Committee of the Balbhavans as envisaged in the G. O. read above. The question of entrusting the audit of the Kerala State Jawahar Balbhavan/District Level Balbhavans to the Examiner, Local Fund Accounts has been engaging the attention of Government for some time past because the Jawahar Balbhavans are depending mainly on grant-in-aid from Government for their functioning.

2. Government are, therefore, pleased to order in consultation with the Examiner, Local Fund Accounts and the Director of Public Instruction, that the accounts of the Kerala State Jawahar Balbhavan, Trivandrum and the District Level Balbhavans will be audited by the Examiner of Local Fund Accounts with effect from the financial year 1980-81 onwards.

3. The following amendments will be made to Rules, 4,9, 10 and 11 contained in the G. O. read above.

(i) The words 'Chartered Accountant' occurring in Rule 4 will be substituted by the words 'Examiner of Local Fund Accounts'.

(ii) Rule 9 will be substituted by the following:

Rule 9.—(a) The accounts of the State Jawahar Balbhavan/District Balbhavans shall be audited annually by the Examiner of Local Fund Accounts.

(b) The Examiner of Local Fund Accounts shall furnish to Government and to the Institution soon after close of audit for a year, a copy of the audit report, a statement of receipts and charges for the year and a certificate showing the eligibility for grant for the year. The amount of grant paid for the year will be subject to adjustments based on the audit certificate of the Examiner.

Rule 10.—The words 'to the Chartered Accountant appointed by the Managing Committee' occurring in the 2nd and 3rd sentences will be substituted by the words 'to the Examiner of Local Fund Accounts'. The words 'Chartered Accountant' occurring in 2 places elsewhere in the rule will be substituted by the words 'The Examiner of Local Fund Accounts'.

Rule 11.—The words 'Chartered Accountant' occurring in line 4 will be replaced by the words 'The Examiner of Local Fund Accounts'.

By order of the Governor,
C. Sivasankaran,
Additional Secretary to Government.

To

The Director of Public Instruction, Trivandrum.
The Examiner, Local Fund Accounts, Trivandrum.
The Accountant General, Trivandrum (This order issues with the concurrence of the Finance Department).
The Hon. Executive Director, State Jawahar Balbhavan, Trivandrum.
The Hon. Executive Director, Quilon District Jawahar Balbhavan and Children's Library, Sasthri Junction, Quilon-1.
The Hon. Secretary, Jawahar Balbhavan and Children Library, Kottayam-1.
The Hon. Secretary, Jawahar Balbhavan and Children Library, Alleppey.
The District Collectors, Alleppey, Quilon, Kottayam and Trichur.
The Assistant Administrative Secretary, Jawaharlal Nehru Memorial Fund, Teen Murthi Bhavan, New Delhi-110011 (with C. L.)
The Finance Department (vide U.O. No. 42516/PUC2/81/Fin. dated 10-6-1981.)
The Culture Department.
The Stock File.

Kerala Gazette No. 2, dated 6th July 1982.
PART I



GOVERNMENT OF KERALA

Abstract

REVISED RULES FOR KERALA AGRICULTURAL WORKERS PENSION SCHEME, 1980—AMENDMENT—ISSUED.

LABOUR (F) DEPARTMENT

G.O. (P) No. 18/82/LBR. *Dated, Trivandrum,* 14*th May* 1982.

Read:—1. G.O. (P) No. 112/80/LBR. dated 28-10-1980.
2. Letter No. EL2-2606/81 dated 7-2-1981 from the Director of Panchayats.
3. Letter No. P1-11446/81 dated 21-4-1981 from the Labour Commissioner.

ORDER

The Director of Panchayats in his letter read as second paper above raised the following points for clarification regarding revised rules for Agricultural Workers Pension Scheme issued in G.O. read as first paper above.

(i) No mention has been made in the revised rules regarding the quorum for holding a meeting; [Rule 6 (b)].

(ii) The procedure to be followed in the case of controversial issues when equal number of votes are polled is not specified. [Rule 6 (c)].

The Labour Commissioner was also consulted in the matter.

Government having examined all the aspects have decided to amend revised rules issued in the Government Order read as first paper above as follows:—

AMENDMENT

In rule 6 of the said rules,—

(1) in sub-rule (b), the following shall be added at the end, namely:—

"As nearly as may be one half of the representatives each of the agricultural workers and of the local bodies shall constitute quorum for a meeting of the selection committee."

(2) in sub-rule (c), the following shall be added at the end, namely:—

"When the members of the Committee vote in equal numbers on any particular issue the presiding member of the Committee shall exercise a casting vote."

(3) after sub-rule (d), the following new sub-rule shall be inserted, namely:—

"(dd) The President/Chairman/Mayor representing the local body will preside over the meeting of the Committee".

The Revised Rules issued in the Government Order read as first paper above stands modified to the above extent.

By order of the Governor,

V. KRISHNAMURTHY,

Secretary to Government.

Kerala Gazette No.27 dated 6th July 1982

PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 593/82/LBR. *Dated, Trivandrum, 7th May* 1982.

The award of the Labour Court, Ernakulam in respect of the dispute between the Management of Ernakulam District Wholesale Co-operative Consumers, Store Ltd. No. E-122, Cochin-16 and the workman of the above concern, Shri K. Aravindaksha Menon, 34/399-1, Mangattu House, Ernakulam, Cochin-20 received by Government on 4-5-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
P. Gomathy Amma,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Dated this the 28th day of April, 1982

Present:

Shri N. SUKUMARAN, B.Sc., B.L.,
Presiding Officer

In

INDUSTRIAL DISPUTE No. 351 of 1979

Between

The Management of Ernakulam District Wholesale Co-operative Consumers, Store Ltd. No. E-122, Cochin-16

And

The workman of the above concern Shri K. Aravindaksha Menon 34/399-1, Mangattu House, Ernakulam, Cochin—20.

Representations:—

Shri. D. R. Kamath, Advocate, Cochin-2 . . For *Management.*

Shri P. F. Thomas, Advocate, Cochin-12 . For *Workman.*

G.A. 92/V.

AWARD

This reference made by Government as per G. O. (Rt.) No. 1112/79/ L&H dated 4-8-1979 concerns the dismissal of an employee by name Shri K. Aravindaksha Menon.

2. Shri Aravindaksha Menon was employed as the Chief Pharmacist in the Medical Counter of the Ernakulam District Wholesale Consumers' Store popularly known and hereinafter referred to as the Department Store. There was a junior Pharmacist also in the Medical Counter of the Department Store. A stock verification with reference to the Liability Register maintained in the Department Store as on 30-6-1977 revealed a deficiency to the tune of Rs. 12,467.39. A subsequent verification on 16-10-1977 revealed a further shortage of Rs. 11,579.89. Therefore disciplinary proceedings were initiated against the two Pharmacists. Initially they were asked to explain the position. Later they were placed under suspension serving formal charges for the shortage. A domestic enquiry was also conducted. The Enquiry Officer found the two workmen guilty. So both of them were dismissed. Shri Unnikrishnan, the Junior Pharmacist, I am told, had accepted the dismissal. Shri Aravindaksha Menon had raised an industrial dispute regarding his dismissal and that is how the reference was made.

3 The Management in its written statemment contends that Shri Aravindaksha Menon was in charge of the medicines issued to the Medical Counter and himself and the Junior Pharmacist who were jointly and severally liable to account for the goods entrusted to them were proceeded and punished for the actual deficiency in stock for which they were responsible. It is further contended that they were found guilty of the misconduct in a properly conducted domestic enquiry.

4. Shri Aravindaksha Menon in his claim statement as well as rejoinder contends that he and the Junior Pharmacist alone were not responsible for the medicines stored in the Medical Counter and that the Business Manager and the Manager were also liable and that action was not initiated against all equally responsible. He also stated that there was no proper and valid domestic enquiry. He is claiming reinstatement pleading innocence of the misconduct attributed to him.

5. The validity of the domestic enquiry was tried by me as a preliminary issue. I found as per my order dated 23-11-1981 that there was no proper domestic enquiry. That order is appended to this award as an "Annexure", The Enquiry Officer was examined as MW1 in connection with the preliminary order. After the preliminary order the Management proposed to adduce fresh evidence. One witness was examined as MW2 and Exts. M2 to M19 were marked. Shri Aravindaksha Menon originally examined as WW1 got himself examined further after the preliminary order. The document on his side is Ext. W1.

6. The point arising for consideration is as to whether Shri Aravindaksha Menon is guilty of the misconduct attributed to him. The charge is that Shri Aravindaksha Menon along with Shri Unnikrishnan,

the Junior Pharmacist, misappropriated stock to the value of Rs. 24,047.28 as revealed in the stock verifications held on 30-6-1977 and 16-10-1977. The two employees were asked for the first time in Ext. M5 memo dated 17-11-1977 to remit the value of the shortage in stock within three days and to show cause why disciplinary action should not be taken against them for the misappropriation. Shri Aravindaksha Menon in Ext. M6 dated 21-11-1977 requested for a week's time to submit his explanations after verifying the records. He submitted Ext. M6 (a) explanation on 24-11-1977 pleading innocence and stating that the deficiency in stock noticed at the verifications can only be the result of some mistake in accounting. He also stated therein that he may be given an opportunity to verify the relevant records and submit a detailed explanation. But on the same day he was placed under suspension as per the composite charge-cum-suspension order Ext. M8. The detailed explanation submitted by Shri Aravindaksha Menon to the charges is Ext. M9 dated 1-12-1977. There he denied his liability for the deficiency, if at all any, and stated that the correctness of the deficiency pointed out is not accepted. He also pointed out that there was an instance where Shri Unnikrishnan, the Junior Pharmacist, had sold medicines without bills and that there are possibilities for others to commit misappropriation and cause deficiency in stock without his consent and knowledge. Almost all the other contentions now advanced were also raised in that explanation.

7. Now we have to see as to whether there was an actual deficiency in the stock. The system followed in the various counters of the Department Store as is spoken to by MW2 and admitted by WW1 is the liability system which is as follows:—

The commodities for sale in a particular counter are entrusted to the persons responsible for sale entering the value at the selling price as liability in a register called Liability Register which is accepted by the Salesman. The price of commodities sold is remitted to the Cash Department of the Store and the liability from day to day is reduced to the extent of such remittance. Further supply of commodities as and when made is added on to the liability. The progressive total at any given time is the value of the stock that should normally find a place in the particular counter. If there is any shortage found at the time of actual physical verification then those liable as per the Liability Register are proceeded against for recovery of the deficiency. The Particulars of the items missing will not be assessed as the value alone is important.

8. There was one such verification on 31-1-1977. The result is shown in Ext. M3 Liability Register at page 39 which is marked as Ext. M3(a). Then there was an excess stock to the value of Rs. 1,084. 37. The excess is also added on to the book balance and the liability is carried forward including that excess. The next verification was on 30-6-1977. That is recorded in Ext. M4 Liability Register at page 5 marked as Ext. M4 (a). There was then a deficiency of stock to the value of Rs. 12,467.37. Shri Aravindaksha Menon admittedly is a

signatory to Ext. M4 (a). It is admitted by him that the stock verification was made in his presence. The Management's case is that it wanted to have a re-check in view of the huge deficiency and a further verification was conducted after checking all the accounts on 16-10-1977 and then a further deficiency was noticed. The result of that verification finds a place at page 14 of Ext. M4 separately marked as Ext. M4 (b). That verification was also admittedly made in the presence of Shri Aravindaksha Menon. He is a signatory to Ext. M4 (b) also. A faint attempt is made by him in his evidence to say that he did not affix his signature to Exts. M4 (a) and M4 (b) voluntarily and that he was compelled to affix the Signature. But it is common case that periodical verifications of stock are made in the presence of those liable as per the Liability Register and that it is the practice for persons liable to sign in token of having accepted the correctness of the stock as on the date of verification. It is also worthwhile to note that no victimisation was attributed to the Management at the earlier stages of the disciplinary proceedings or even at the stage of filing of the claim statement. It is also pertinent to notice that the Management did not rush up with any action consequent on the deficiency noticed as per Ext. M4 (a). It ordered a further and detailed verification and thereafter only action and disciplinary proceedings were initiated. At the initial stages Shri Aravindaksha Menon did not have a case that the stock position as revealed in Exts. M4 (a) and M4 (b) is not correct. Even now there is no definite case that more stock than what are noted in Exts. M4 (a) and M4 (b) were actually available. The contention is that there may be possible mistakes in the accounting Sections. There cannot be any such possibility as the entire transactions are booked in the Liability Register. The receipt of goods as per the intented sale value and the remittance of the cash collected are regularly entered in the book from day to day. If there is any mistake in the accounting then it is easy to point out that mistake. No specific instances of mistakes are brought to my notice. So the position is that there was actual deficiency as revealed by Exts. M4 (a) and M4 (b). So we have to proceed further assuming that the Management's case that there was deficiency to the tune of Rs 24,047.28 in the stock in the Medical Counter is correct.

9. Now we have to consider as to whether Shri Aravindaksha Menon also was responsible for the shortage. Ext. M2 service order dated 29-2-1968 defines duties and responsibilities of employees in charge of Medical Section. Therein three Persons are mentioned as employed in that Section. One is mentioned as the in-charge. He is also mentioned as the Manager of the Drugs Store. He is mentioned as the person in actual charge of the Section. The Junior Pharmacist is directed to work under him. The Clerk in the Department is allotted the duty of fixing the sale price and to maintain the Liability Register. He is directed to work under the Manager of the Section. MW2 swears that the reference to in-charge and Manager of the Medical Section is to the Chief pharmacist. It is admitted by WW1 also that he was doing the duties as assigned in Ext. M2 and that he was in actual physical control of the Section including

the key till 1-1-1976. The contention is that the situation was changed ever since that day with the introduction of Ext. W1 circular.

10. Ext. W1 is dated 1-1-1976. It states that a new system in the matter of control and liability of the various counters became necessary in view of representations received from the trade unions. The pertinent provision is as follows:—

> "In the Department Store, Ernakulam, the Business Manager shall be liable for the stock along with the other sales staff in respect of counters functioning in the first floor. The Floor Manager shall be liable for the stock along with the sales staff in respect of the counters functioning at the ground floor."

It is on the basis of this provision that Shri Aravindaksha Menon contends that the Business Manager and the Floor Manager are also responsible for the deficiency in the stock. The evidence is that the Medical Counter is situated in the ground floor portion of the building where the Department Store is housed in Ernakulam. That being the position the Business Manager cannot at any rate be held responsible for the stock in the Medical Counter situated in the ground floor. The Floor Manager as per this circular is also responsible for the stock. The circular states further that the shutters will be locked under double lock system. As far as the ground floor is concerned the Floor Manager is to keep one key and the sales staff in the respective counters to keep the other key each for a week in rotation. The evidence is that the Medical Counter and the Cosmetic Counter are housed in the same room having a common shutter. There were two employees in each of the Counters responsible for the sales in each counter. Thus there were four persons entitled to hold the same key in rotation once in four weeks.

11. It is common case that the shutter is closed and opened in the presence of all persons responsible for the stock. An argument is advanced that the Floor Manager in connivance with the Salesman who is possessed of the other key can remove any item in the counter without the knowledge of other employees. But we have to remember that the Salesmen or persons responsible for the stock like Shri Aravindaksha Menon handle the goods regularly in the counter and it is possible for such persons to notice and detect any deficiency caused by unauthorised removal during the periods when the counter is expected to be under lock and key. If any such deficiency is noticed then naturally a complaint regarding the same would have been raised at the appropriate time. There is no case that any such deficiency ever occurred. It is the admitted case that the Floor Manager though he is also liable as per Ext. W1 never handles the stock or the cash concerning the Medical Counter. So it is impossible for the Floor Manager to be a party to misappropriation of the stock or its value without the concurrence of the Salesman. So even if it is assumed for a moment that the Floor Manager is also a party to the fraud it cannot be said that Shri Aravindaksha Menon and the other Salesman

responsible in the Section are innocent. MW2 has stated that the explanation of the Floor Manager and the Business Manager were also called for regarding the deficiency and that the explanations submitted by them were found satisfactory and therefore they were not proceeded against. The said explanations are not in evidence before me. But it is admitted that an arbitration case for realisation of the amount is filed by the Management including the Business Manager and the Floor Manager as the defendants. That circumstance is relied on by the learned counsel appearing on behalf of the employee to argue for the position that the Management took disciplinary proceedings against Shri Aravindaksha Menon and the Junior Pharmacist only when it is also convinced that the Superior Officers are also responsible and that amounts to discrimination. As per Ext. W1 the Floor Manager and the Business Manager are also responsible and that probably is the reason why they are also made parties in the arbitration case. But that liability need not necessarily mean that they had actually committed misappropriation. An Officer who is ultimately liable constructively may have to make good the deficiency even in cases where actual misappropriation is committed by the subordinate. That does not necessarily mean that the Superior Officer committed the misappropriation. I have already mentioned that it is not possible for the Superior Officer alone in the peculiar circumstances of the case to commit the misappropriation. If at all he can do it only with the active participation of the subordinates. There are no indications to show that there is such participation of the Superior Officer. In these state of affairs it cannot be said that there is discrimination in the matter of disciplinary proceedings.

12. It is admitted by MW2 that there was an instance of the Junior Pharmacist Shri Unnikrishnan making a sale of some medicine without proper bill. It is further stated by him that action for his dismissal was initiated on that account, but did not proceed because of this disciplinary proceedings. An argument is advanced that the Junior Pharmacist capable of committing misappropriation as proved in a particular case must be the villain of the show. But Shri Aravindaksha Menon is the person in charge of the Medical Counter. He has the responsibility to effectively supervise those working under him. Of course he has a case that the Junior Superintendent is not a subordinate over whom he has control. But that is not so as revealed in Ext. M2. The duties and responsibilities as per Ext. M2 are not altered altogether by Ext. W1. Ext. W1 has only provided further safety checks in addition to the distribution of work as per Ext. M2. So Shri Aravindaksha Menon cannot escape liability by saying that the mischief must have been done entirely by the Junior Pharmacist.

13. Another possibility pointd out is that one Sudhakara Pillai was also functioning as a Pharmacist in the Medical Counter for some time during the crucial period and he should have committed the mischief. But the evidence is that he, a reserve hand, was transferred and posted in the Section only to assist others. So no responsibility could be fastened on that person.

14. Yet another situation pointed out is that the employees of the Cosmetic Counter functioning in the same room could pilfer medicines. There may be such remote possibilities. But that is not possible without being noticed and detected by the Personnel in charge of the Medical Counter.

15. Shri Aravindaksha Menon had admitted in his evidence (at page 12 of his deposition) that as the Senior Pharmacist he was in over all charge of the Section and that the arrangement made in Ext. M2 was being continued even after Ext. W1. He along with the Junior Pharmacist was acknowledging the liability of the stock of the Medical Counter as per Ext. M3 and Ext. M4. The Medical Section Clerk who is also known as the Godown Clerk does only clerical work and actually there is no godown for separate storage of the goods and the goods received are stored and displayed at the counter. Purchases are effected by Shri Aravindaksha Menon. Despatches to other Depots are also made by him. Thus he is in actual Physical control of the stock and he is also jointly and severally liable as per the circulars. So in any event he cannot escape liability for the shortage. It may be that it is not possible to say definitely that the shortage occurred in a particular way with regard to particular items. It is unnecessary to insist proof on those matters in a proceedings like this. As stated by MW2 it is possible to find out the missing items if an elaborate research work with reference to issue slips and selling bills regarding this period consisting of voluminous papers is undertaken. But we need not undertake such a trouble. Suffice it to say that Shri Aravindaksha Menon definitely is responsible for the shortage. It may or may not be that others are also responsible. Anyway his responsibility for the deficiency in the stock can easily be fixed. It may be that he did not commit misappropriation by himself. Even in that case he cannot escape liability for the shortage in the stock.

16. Now remains the question as to whether Shri Aravindaksha Menon deserves any relief in the matter of punishment. As already mentioned it is not possible to say precisely that he committed misappropriation. But he has proved himself to be unfit to be in charge of a Section where there is huge deficiency during the period when he was in overall charge. A Department Store owned and managed by a Co-operative Society can exist and flourish only if it is manned by efficient hands with vigilance. Reinstatement of a person like Shri Aravindaksha Menon, who has prove himself to be unfit to hold the post of in-charge of a Section, is therefore out of question. The Department Store has suffered heavy damage on account of the action or inaction of Shri Aravindaksha Menon and therefore I do not find any justification to give any relief to him in the matter of punishment. In the result an award is passed confirming the dismissal of Shri K. Aravindaksha Menon.

Ernakulam,
28-4-1982.

N. SUKUMARAN,
Presiding Officer.

Annexure

In the Labour Court, Ernakulam

Dated this the 23rd day of November, 1981

Present:

SHRI N. SUKUMARAN, B. SC., B. L.,

Presiding Officer

In

Industrial Dispute No. 351 of 1979

Between

The Management of Ernakulam District Wholesale Co-operative Consumers Stores Ltd., No. E122, Cochin-16

And

The workman of the above concern Shri K. Aravindaksha Menon, 34/399-1, Mangattu House, Ernakulam, Cochin-20

Representations :—

Shri D. R. Kamath,
Advocate, Cochin-2 ... For *Management*

Shri P. F. Thomas,
Advocate, Cochin,12. .. For *Workman*

ORDER

Shri K. Aravindaksha Menon is challenging his dismissal as one effected without any reasonable basis. The answer of the Management is that the employee was found guilty of grave acts involving misappropriation of substantial sums of money. According to the Management, the misconduct was proved in a properly conducted domestic enquiry. The workman has a case that there was no proper domestic enquiry. In view of the rival contentions the validity of the domestic enquiry is being tried as a preliminary issue. The Enquiry Officer is examined as MW1. He had proved Ext. M1 as the file containing the relevant records in connection with the domestic enquiry. The workman got himself examined as WW1 before me. Arguments were also heard.

2. The point arising for consideration at this stage is as to whether there was a valid and proper domestic enquiry. Shri Menon was proceeded against along with another employee Shri K. G. Unnikrishnan. These two were working in the medical counter of the Department Stores at Ernakulam owned by the Management involved in the case. The common charge was admittedly served on the employees. It reads as follows:—

> "Stock verifications were conducted at Medical Counter, Department Store, Ernakulam on 30-6-1977 and 16-10-1977. After assessing the result of these verifications, it is noticed that stock worth Rs. 24,047.28 (Rupees twenty four thousand and forty-seven and paise twenty-eight only) is short.

Hence M/s. K. Aravindaksha Menon, Sr. Pharmacist and K. G. Unnikrishnan, Junior Pharmacist, Department Store, Ernakulam are hereby directed to remit the deficit stock value of Rs. 24,047.28 in the Head Office of the Store within three days on receipt of this memo.

They are also directed to show cause within three days on receipt of this as to why disciplinary action should not be taken against them for misappropriation of stock belonging to the store, failing which it will be construed that they have no valid cause to show and further action pursued accordingly."

Both employees submitted separate explanations. Shri Aravindaksha Menon in his explanation while pleading innocence stated that there were other employees also in the Department and that the failure to take action against the others is a discrimination. Shri Unnikrishnan in his explanation categorically stated that Shri Aravindaksha Menon who is the Senior Pharmacist in charge, was in control and custody of the affairs and assets and therefore he is liable for the shortage in stock. An enquiry was ordered on finding that the explanations were unacceptable. That was how MW1, an Advocate, appointed for the purpose conducted the enquiry.

3. The main complaints regarding the enquiry are the following:—

i) The workman was not given an opportunity to adduce his evidence.

ii) The workman was not given opportunity to be present at the enquiry throghout.

iii) The workman was not permitted to cross-examine Shri Unnikrishnan who was examined as a witness.

iv) The findings are perverse.

I shall consider these objections one by one.

4. The workman admittedly was served with the above charge which is self explanatory. He is seen to have submitted an elaborate explanation running into several pages. That is in English. The workman admittedly had passed the S. S. L. C. examination some 28 years back. (Admittedly in evidence as WW1). He did not ask for the assistance of anybody at the enquiry. He had signed the proceedings written and maintained by the Enquiry Officer on every day. The first sitting was on 3-2-1978. Shri Aravindaksha Menon was present and he undertook to file the list of his witnesses on the adjourned date which was 7-2-1978. That day he did not file the list of his witnesses. But he understood to produce his witnesses on the adjourned date. The next sitting was on 10-2-1978. He did not file any list of witnesses on that day. He stated that he has no documents to be filed. The Management's witnesses were examined on that day. He was elaborately cross-examined. The Management closed its evidence. The case came up next on 11-2-1978. Shri Aravindaksha Menon wanted to examine himself as a witness. That request was allowed

and he was examined. Shri Unnikrishnan was also examined as a witness on the same day. There was one other sitting on 13-2-1978. All thatt Shri Aravindaksha Menon wanted to do on that day was to take copies of the depositions. The case was adjourned to 15-2-1978 for filing of his argument notes. Shri Unnikrishnan filed his argument notes But Shri Aravindaksha Menon wanted time for filing his argument notes The request was allowed and the case was adjourned to 21-2-1978. On that day also he applied for further time for filing argumnt notes. That request was also granted and the case was posted to 27-2-1978. He was told that he will not be given any further chance for the purpose. But he did not file any argument notes. When the Enquiry Officer rendered his findings that both the workmen are guilty of the charges the Management gave an opportunity to the workman to have a personal hearing before the Disciplinary Committee. Shri Aravindaksha Menon appeared before the Committee on 10-4-1978 and gave a statement. That was recorded. That also forms part of Ext. M1. A show cause notice was also issued as to why the employees should not be dismissed. To that also Shri Aravindaksha Menon filed a detailed explanation challenging the validity of the domestic enquiry. But in none of these statements did Shri Aravindaksha Menon complain that he was not given an opportunity to examine his witnesses. That complaint is raised for the first time in his claim statement. The sequence of events and the averments contained in the admitted statements given at the various stages indicate that the workman did not want to examine any witness on his side. The complaint of denial of opportunity to adduce evidence raised for the first time in the claim statement is evidently the result of an afterthought. I have no hesitation to say that the workman did not want to examine any witness on his side and that he could very well have adduced independent oral evidence if as a matter of fact he wanted to do so.

5. The complaint Nos. 2 and 3 enumerated above can be consideres together. It is admitted by MW1 that the solitary Management's witness was cross-examined by each of the workman in the absence of the other workman. It is further the admitted case that Shri Aravindaksha Menon was examined as a witness in the absence of Shri Unnikrishnan and Shri Unnikrishnan in the absence of Shri Aravindaksha Menon. It is stated by MW1 that he directed one of the workmen to remain away from the venue of enquiry when the other workman was cross-examining the Management's witness and giving evidence. This procedure, according to the learned counsel appearing on behalf of the workman, had prejudiced the workman adversely. The learned counsel for the Management vehemently argued before me that there was no such prejudice. The explanation offered by the Enquiry Officer is that he did not want one workman to know what the other workman had stated in the evidence or attempted to bring out in cross examination. It appears to me that this procedure adopted by the Enquiry Officer is not correct. It is a fundamental rule that the witnesses are to be examined in the presence of the workman. That rule applied to chief examination as well as cross-examination when there are more than

one delinquent worker. This is a case where each of the workman had attempted to fix the liability on the other. So they had nothing in common in their defence. In such circumstances the Enquiry Officer should certainly have permitted both the workmen to participate in the enquiry throughout. There is no justification for conducting some part of the proceedings in the absence of the workman. The learned counsel for the Management explained that the delinquent workmen cannot be treated as witnesses as they are only parties. But they have been examined as witnesses and cross-examined by the Management. The opportunity to cr ss-examine was denied to the workmen. Now we are concerned only with Shri Aravindaksha Menon and there is great force in the complaint that Shri Aravindaksha Menon should have been given an opportunity to cross-examine Shri Unnikrishnan. The complaint has greater force when we scrutinise the report of the Enquiry Officer. There he is seen to have relied on the evidence of Shri Unnikrishnan to say that Shri Aravindaksha Menon is guilty. I need not elaborate further that the procedure in having collected evidence in the absence of the workman and utilising that evidence against him is a practice which cannot be upbeld as correct. So the whole enquiry is vitiated.

6. I need not consider the last complaint that the findings are perverse as I have already found that the enquiry cannot be supported for other reasons.

7. In the result it is hereby found that the enquiry was not properly held. The enquiry proceedings and the findings rendered by the Enquiry Officer are hereby set aside. The Management no doubt will be at liberty to attempt to substantiate the charges before this Court by fresh evidence if so advised.

Dictated to the Confidential Assistant, transcribed and typed out by him, corrected by me and declared in open Court on this the 23rd day of November, 1981.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witnesses examined on the Management's side :

MW1 Shri Anil Kumar.
MW2 ,, C. P. Manikantan Nair.

Witness examined on the workman's side :

WW1 Shri K. Aravindaksha Menon.

Exhibits marked on the Management's side :

Ext. M1. The file containing the relevant records in connection with the domestic enquiry.

,, M2. Copy of Service Order dated 29-2-1968 defining the duties and responsibilities of in-charge of Medical Section.

Ext. M3. Liability Register of Medical Counter for the period from 1-1-1976 to 31-5-1977.

" M3 (a). Page 39 of Ext. M3.

" M4. Liability Register of Medical Counter for the period from 1-6-1977 to 31-12-1977.

" M4 (a). Page 5 of Ext. M4.

" M4 (b). Page 14 of Ext. M4.

" M5. Copy of a show cause memo dated 17-11-1977 issued to Shri Aravindaksha Menon and Shri Unnikrishnan by the Management.

" M6. A representation dated 21-11-1977 from Shri Aravindaksha Menon requesting one week's time to submit his explanations.

" M6 (a) Explanation of Shri Aravindaksha Menon dated 24-11-1977.

" M7. Explanation of Shri Unnikrishnan dated 21-11-1977.

" M8. Copy of charge-cum-suspension order dated 24-11-1977 issued to Sarvasree Aravindaksha Menon and Unnikrishnan.

" M9. Explanation of Shri Aravindaksha Menon dated 1-12-1977 submitted to the Management.

" M10. Explanation of Shri Unnikrishnan dated 2-12-1977 submitted to the Management.

" M11. Copy of a communication dated 1-4-1978 from the Management directing Sarvasree Aravindaksha Menon and Unnikrishnan to appear before the Disciplinary Action sub-committee for a personal hearing.

" M12. A representation of Shri Aravindaksha Menon dated 10-4-1978.

" M13. A statement of Shri Unnikrishnan dated 27-4-1978.

" M14. Deposition of Shri Aravindaksha Menon given before the Disciplinary Action Committee on 10-4-1978.

" M15. Copy of dismissal order dated 10-5-1978.

" M16. Transfer order of Shri Sudhakaran Pillai dated 4-4-1977.

" M17. Copy of a memo dated 31-10-1977 issued to Shri Aravindaksha Menon.

" M18. Copy of a Medical Branch Indent Slip dated 25-11-1977 addressed to the Depot Manager.

" M19. Cash bill No. 43778 dated 4-8-1981 of Janatha Medicals for Rs. 13. 75.

Exhibits marked on the Workman's side :

Ext. W1 . Circular of the Management Store dated 1-1-1976.

" W2. Copy of a Medical Branch Indent Slip dated 25-11-1977 addressed to the Depot Manager.

Kerala Gazette No. 27 dated 6th July 1982
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 484/82/LBR. *Dated, Trivandrum, 4th May 1982.*

The award of the Labour Court, Ernakulam in respect of the dispute between the General Manager, M/s Travancore Rubber & Tea Company Limited, Mundakayam and the workmen of the above Estate represented by the Secretary for Kerala, The Estate Staffs Union of South India, Muttambalam P. O., Kottayam received by Government on 3-5-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 Central Act XIV of 1947).

By order of the Governor,
P. GOMATHY AMMA,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Dated this the 27th day of April, 1982

Present

SHRI N. SUKUMARAN, B. SC., B. L.,
Presiding Officer

In

INDUSTRIAL DISPUTE No. 36 OF 1980

Between

The General Manager, M/s Travancore Rubber & Tea Company Limited, Mundakayam.

And

The workman of the above Estate represented by the Secretary for Kerala, The Estate Staffs Union of South India, Muttambalam P. O., Kottayam.

Representations:—

Shri N. Krishnankutty, Advocate, Trivandrum. — For *Management*

M/s M. Ramachandran & K. R. B. Kaimal, Advocates, Cochin-17. — For *Union*

AWARD

The issue referred for adjudication by Government as per G.O. (Rt.) No. 610/80/LBR dated 12-5-1980 is "Dismissal of an employee". The dismissal was after a domestic enquiry the validity of which was considered as a preliminary issue. I found in my preliminary order dated 15-3-1982 that there was a proper and valid domestic enquiry. The findings of guilt rendered by the Enquiry Officer were also upheld by me. Necessary facts have been stated in that order which I shall here extract in full:—

"ORDER

Dismissal of Shri K. S. Elias, Assistant Rubber Maker-Cum-Store Keeper of the Manickal Estate belonging to the Managing Company is the matter involved in this reference. The Management initiated disciplinary proceedings against Shri Elias along with two other workmen Sarvasree Soman and Ponnan. This was consequent on the detection of an irregularity by the Junior Superintendent of the Estate when he visited the Rubber Factory at 9 45 p.m. on 27-4-1976. The second shift of the factory was then in progress and Shri Elias was in charge of the manufacture. The abovementioned two workmen engaged in feeding raw rubber to the roller was seen by the Junior Superintendent charging the roller along with the raw material sand which is not permitted. The Junior Superintendent questioned one of the workmen Shri Soman as to why the roller was charged with sand Shri Soman said that he acted under the instructions of the Asst. Tea-Maker Shri Elias. These facts are admitted. It was on the basis of these facts that the Management initiated disciplinary proceedings against Shri Elias and the other two workmen. The charge-sheets were issued and their explanations obtained. The explanations were quite unsatisfactory and a domestic enquiry was ordered. The Enquiry Officer found that the two workmen committed the misconduct as instructed by Shri Elias and recommended that the misconduct of the two workmen Sarvasree Soman and Ponnan may not be viewed seriously as they only acted under the instructions of their superior. So the Management gave them the minor punishshment of warning, but dismissed Shri Elias.

2. In the charter of demands appended to the reference and the clarification statement filed by the Union it is alleged that Shri Elias who was innocent and unaware of the alleged misconducts said to have been committed by the workmen was victimised by the Junior Superintendent on account of some grudge which he had entertained against him. It is further complained that the domestic enquiry was only a farce held by an Advocate appointed and paid for that purpose by the Management without giving the workman a fair and impartial opportunity to establish his innocence. The correctness of the findings of the Enquiry Officer are also challenged as perverse. Yet another contention is that the Junior Superintendent who initiated action and effected dismissal has no authority to do so as per the relevant provisions of the Articles of Association of the Company. Reinstatement of Shri Elias with all benefits is prayed for.

3. The Management contends that Shri Elias was really guilty of the grave misconduct of instructing the other two workmen to add sand along with the rubber charged on to the roller with intend to cause injury to the machinery and deterioration in the quality of the end product. There was a deterioration in the quality of the products of this factory for sometime past resulting in complaints from the customers and specific instructions were issued to those in charge of the factory including Shri Elias to improve the quality and the action of Shri Elias was intended to cause loss in reputation and money to the Company. It was in such circumstances that the Company viewed the matter seriously and initiated the disciplinary proceedings. The Junior Superintendent had no axe to grind against Shri Elias. There was also no idea to victimise him. The Junior Superintendent had authority to initiate disciplinary proceedings and inflict the punishments. The enquiry itself was conducted by an independent advocate appointed for that purpose. He conducted the enquiry giving sufficient opportunity to the workman to prove his innocence. He participated in the enquiry, cross-examined the Management's witnesses at length and examined several witnesses on his side in support of his case. An observer of his choice was also permitted at the enquiry. There was no procedural irregularity and the Enquiry Officer came to the reasonable conclusion that Shri Elias is guilty of the charge on the basis of the evidence available at the enquiry. That finding can in no circumstance be characterised as perverse. That finding was accepted as corrected by the Quilon Labour Court in an application filed for approval of the dismissal. The order granting approval was passed after elaborate enquiry and it is not open to the Union to challenge the correctness of the same over again. The Union that is espousing the cause of the workman does not represent any substantial number of workmen of the Estate and therefore there is no valid industrial dispute. The punishment awarded to Shri Elias is sustainable in view of the gravity of the proved misconduct. He is therefore not entitled to any reliefs.

4. The Union has filed a rejoinder refuting the contentions and reaffirming its earlier stand.

5. The contention of the Management that the Union has no effective representation of the workmen of the Estate and therefore there is no industrial dispute is not pressed before me.

6. In view of the rival contentions regarding the domestic enquiry it became necessary to consider the validity of the domestic enquiry as a preliminary issue. The Advocate Enquiry Officer was examined as MW1. The file containing the papers relating to the disciplinary proceedings and the domestic enquiry proved through him is Ext. M1. The findings of the Enquiry Officer is Ext. M1 (a). That is all the evidence available.

7. The learned counsel appearing on behalf of the Management vehemently argued before me that the validity of the domestic enquiry had already been upheld by the Quilon Labour Court while granting approval of the Management's action in having dismissed this workman and therefore

it is not open to the Union to challenge that aspect over again. The answer of the learned counsel appearing on behalf of the Union is that the scope of the enquiry at that stage was very much limited and a finding given there is no bar for agitating the matter over again. There is great force in this argument of the Union. With the introduction of Sec. 11 A in the Industrial Disputes Act the Labour Courts and Tribunals have wider Power while adjudicating the correctness of dismissals than the jurisdiction exercised while considering applications for approval under Sec. 33 (2) (b) of that Act. That the position is so had been declared by the Supreme Court in the Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management and others (1973 I LLJ 278). So it is open to this Court to consider the validity of the domestic enquiry afresh.

8. This is a case where the workman was served with a detailed charge to which he submitted an explanation pleading innocence. The enquiry was conducted with proper notice to the workman. He participated throughout with the assistance of an observer of his choice. He cross-examined the Junior Superintendent who was the sole witness examined for the Management at length. He also examined as many as 7 witnesses on his side. The proceedings paper maintained by the Enquiry Officer showing the progress of the enquiry and the depositions of the witnesses are all signed by Shri Elias. The Enquiry Officer had also given an opportunity to Shri Elias to explain the incriminating circumstances appearing in evidence against him. No sort of complaints were raised by Shri Elias at the enquiry regarding the procedure adopted by the Enquiry Officer. No suggestions are made to the Enquiry Officer when he was examined before me that he was in any way biased. In these state of affairs the criticism raised in the pleadings against the integrity and impartiality of the Enquiry Officer need not be given any serious consideration.

9. Lack of bona fides and presence of an idea to victimise the workman are attributed to the Management. The claim is that the Junior Superintendent had a special motive to get rid of this workman. But no such allegation is seen raised by Shri Elias in the explanation filed by him in answer to the charge. No attempt was also made at the enquiry to show that the Management had any ulterior motive to initiate disciplinary proceedings. On the other hand it is the admitted fact that the irregularity was detected by the Junior Superintendent at the time of his visit and action initiated on its basis. So the Management's action does not amount to victimisation. It was done bona fide on reasonable grounds. It therefore follows that the disciplinary proceedings and the domestic enquiry were initiated and concluded properly in accordance with the principles of natural justice. I find that the enquiry was fair and proper.

10. The more serious contention of the Union is that the findings of the Enquiry Officer are perverse. I shall proceed to consider that aspect. The memo of charges issued to Shri Elias marked as Ext. Ml at the enquiry reads as follows:—

"It is reported that during the visit of the Factory by the Junior Superintendent, Mr. Abraham Lukose, at 9.45 p.m. on Tuesday the 27-4-1976 then you had been in charge of the factory attending the second shift, two workers namely No. 379 M.K. Soman and No. 364 Ponnan working on two Milling Rollers were found to be keeping one Aluminium Dish each filled with sand and gravel and charging the same on to the Rollers along with the rubber milled.

No doubt, you are aware that you are solely responsible for supervising the milling which was the only work being done during the second shift. When the above said workers were interrogated in your presence and also in the presence of the R. Factory Watcher C.K. Thampi by the Junior Superintendent on the spot, the workers replied to him that you are fully aware of milling the rubber with sand and gravel along with rubber while milling. It is very serious offence, and it is made clear by the workers that the misconduct was committed knowingly and calculatedly.

In your presence and also in the presence of the Factory workers both the dishes with the sand and gravel were removed from the spot and kept in the office for safe custody as instructed by the Junior Superintendent.

In the above connection I would like to point out that in the past there had been bad reports from the Coy., about the quality of our rubber when certain very reputed Companies (Buyers) totally rejected our rubber as they contained lot of mud, sand, stones, woodchips etc.,. There was specific report from the Company on the 17th October 1975 and on 22nd October 1975 the said report was forwarded to the factory for comments and explanation from the Factory Staff.

Under the above circumstances, your above action in a clear case of (i) disobedience, (ii) dishonesty in your part in connection with the employer's business which being are misconducts under sub-clause (a) and (c) respectively of Section 14 of the Standing Orders for Estate Staff. Therefore, please show cause within four days of the receipt of this letter as to why appropriate disciplinary action should not be taken against you for the above charges."

Shri Elias submitted his explanation on 4-5-1976 and that is Ext. M2 at the enquiry. Therein he stated while pleading innocence of the charges that he did not issue instruction to any of the other workman to adulterate the raw material used for production in the factory with sand or any other foreign material and if any worker committed any such mischief it was so done by them on their own initiative. It was also stated therein that sand is normally stored in the factory to clean the slipper surface on the floor near the roller. The charge did not specifically say that Shri Elias had issued instructions to the other workmen to commit the mischief. But he had understood the charge as one impugning that allegation as well and the same is also answered in his explanation. The other two workmen asked to explain their position filed separate statements admitting the overtacts

attributed to them and pleading that they did so as instructed by Shri Elias. Shri Soman, one of them examined at the enquiry on his behalf as the 6th defence witness, gives evidence in support of this allegation. The fact that the Junior Superintendent visited the factory at 9.45 p.m. on the relevant date and caught Soman and Ponnan red handed while charging the roller with sand is not disputed. The only dispute is as to whether the workman acted suo moto or under the instructions and knowledge of Shri Elias.

11. The Junior Superintendent when examined as the first witness for the Management at the enquiry has given evidence that he questioned Shri Soman on the spot as to whether he did the mischief according to his own initiative or not and that Shri Soman said in the presence of Shri Elias that the latter had issued oral instructions to do so. It is stated further by the witness that Shri Elias who was present at the time of the questioning did not challenge the veracity of Shri Soman's statement at that time or later. It is the admitted case that Shri Soman and Shri Ponnan are temporary workers. That fact is relied on by the Union to argue that those two workmen who were caught red handed wanted to save their skins somehow and gave a false version that Shri Elias was responsible. Shri Varghese, another factory worker examined as the first defence witness at the enquiry, had stated that Shri Soman had later confessed to him that Shri Elias is really innocent and he (Soman) gave a false version implicating Shri Elias only to escape punishment. It is true that the position of Shri Soman is that of a co-accused made with intend to absolve himself of the probable consequences. For that reason it may be unsafe to accept the same without corroboration. But we have the convincing evidence of the Junior Superintendent to the effect that Shri Elias did not raise any protest when Shri Soman made the incriminating statement against him. I have already mentioned that the contention of the Union that the Junior Superintendent has a grudge against Shri Elias was not taken up at the earlier stages or at the enquiry. So we have to proceed assuming that the Junior Superintendent had no special motive to implicate Shri Elias without valid reasons. The conduct of Shri Elias as spoken to by the Junior Superintendent is very significant. In the ordinary course Shri Elias could have challenged the correctness of the statement made by Shri Soman in his presence then and there. It is true that an attempt is made in the cross-examination of MW1 that he had repeatedly questioned Shri Soman at this spot as to why he mixed sand with the raw rubber. The argument is that Shri Soman did not straight away say that Shri Elias gave instructions and that he was hesitating to answer and finally came forward with a false story. It is not possible to draw such a conclusion. It may be that Shri Soman was reluctant to give out the true state of affairs immediately when questioned. So the conduct of Shri Elias in not having challenged the correctness of the statement of Shri Soman then and there is sufficient corroboration of the statement and the evidence given by Shri Soman.

12. Most of the defence witnesses examined have given evidence that sand is usually stored in the factory to clean the floor when it becomes

slippery very often. The Junior Superintendent has said that sand is not used for that purpose and lime is what is used. This claim is denied by most of the defence witnesses. Relying on the versions of the defence witnesses it is argued that the sand that was available was utilised by the workman without the knowledge of Shri Elias. Shri Elias was not near the roller at the relevant time. The Junior Superintendent also had admitted that Shri Elias was sitting on a chair away from it when he reached the factory. The absence of Shri Elias from the immediate premises of the roller is of no serious consequence when we have evidence to support the allegation that the workmen acted under the instructions. So we have to proceed further finding that the roller was charged with sand along with the raw material under the instructions of Shri Elias and with his consent and knowledge.

13. An argument is advanced that nothing was gained by Shri Elias by adding sand with the raw material milled in the roller. But Shri Soman had stated in his evidence that there was no proper grip for the roller and therefore it was not working properly and instructions to add sand to have an effective grip was issued by Shri Elias when that matter was reported to him. It may be true that the allegation that Shri Elias issued the instructions with the wilful intention of causing damage to the machinery and the reputation of the Company is not correct as we have nothing in evidence to indicate that Shri Elias had any special reason to act against the interest of the Company. It may also be true that Shri Elias issued instructions only to make the machine more effective and boost production. But it is admitted that adding sand on the machinery along with the raw material will affect the quality of the product. It is also in evidence that the machinery is likely to be injuriously affected if the process is done in that manner. It is the admitted case that there were complaints of customers that the quality was deteriorating. Documents evidencing such complaints are also available in Ext. M1. In these state of affairs it can safely be found that Shri Elias gave instructions to add sand on to the roller disregarding the lawful orders of the superiors to see that the quality is maintained. He is therefore guilty of the misconducts attributed to him as found by the Enquiry Officer. The findings are not in any way perverse.

14. In the result it is hereby found that the findings of the Enquiry officer are correct and the same were given in a properly conducted domestic enquiry."

II. The Union has a case that the Junior Superintendent who inflicted the punishment of dismissal had no valid authority to do so. This argument is advanced on the basis of Ext. W1 Memorandum and Articles of Association of the Management Company Clause 76 of which gives the power to dismiss officers and workers of the Company to other authorities. The answer of the Management is that the Superintendent has power to punish the employees under Order 2 (a) of the Standing Orders applicable. A copy of the Standing Orders is available among the records in the file produced by the Management. That file is marked as Ext. M2 for reference

and Ext. M2 (a) is the Standing Orders. The Standing Orders show that the Superintendent or the Manager of the Estate has power to inflict punishments including dismissal. Here in the present case the Superintendent is designated as Junior Superintendent. The Standing Orders does not make any difference or distinction in the grade of the Superintendent or the Manager. It may be that the Superintendents may come under the Junior category or senior category. It may happen that the Senior Superintendent is in charge of a particular Estate. Action taken by him cannot be attacked for the reason that the Standing Orders do not indicate that that particular grade of Superintendent is not competent to act. Same is the position regarding the Junior Superintendent. I am not told that there was some other Superintendent over and above the Junior Superintendent at the relevant time in the Estate. In these state of affairs the Junior Superintendent has power to effect the dismissal as per the Standing Orders. The Standing Orders are applicable to the workmen and the Management and a provision contrary to that in the Articles of Association cannot be taken advantage of the workman who is not a party to it. So the contention that the order of dismissal is ineffective has no force.

III. Now we are left with the question as to whether the workman is entitled to any reliefs in the matter of punishment. Shri M. Ramachandran, the learned counsel appearing on behalf of the Union, vehemently argued before me that the workman had no intention to cause any loss to the concern and the adding of the sand was made with the idea to increase production. It is further submitted that the workman did not gain anything by adopting such a course and the misconduct cannot, therefore, be treated as severe to give any substantial punishment. Shri Krishnankutty, the learned counsel for the Management, on the other hand tried to impress upon me that the quality of the end product produced in the factory was deteriorating on account of the presence of foreign material and that had given room for repeated complaints from the customers resulting even in the rejection of the commodity in certain cases and this workman adopted a procedure which affected the quality of the product even after himself and others responsible for production were given written instructions to maintain the quality of the product and the action in the circumstances has to be viewed very seriously and nothing short of dismissal will be adequate punishment.

IV. There were no prior disciplinary proceedings against this workman. Admittedly he has a clean service record. Now he has already attained the age of superannuation. There is nothing on record to show that this workman was responsible for the deterioration of the quality of the product on prior occasions. Admittedly production was going on in shifts. There are other persons who were in charge of the factory on other shifts. So this workman alone cannot be held responsible for the deterioration in the quality of the product. The workman had nothing to gain by adding sand to the raw material. The evidence indicates that it was done with the idea to boost up production. In any event the workman did not gain anything by adding sand to the product. The Management has no case that it was done deliberately with a view to cause damage to the

Management. Taking into consideration all these aspects and the fact that the workman had put in a long period of service with this Management without previous bad conduct and the further fact that he had attained the age of superannuation by this time I feel that a discharge instead of dismissal will be adequate punishment. So the dismissal is converted into one of discharge and the Management is directed to pay his benefits as though he was discharged on the date on which the dismissal took effect.

V. In the result an award is passed converting the dismissal of the workman into one of discharge the effective date being the date on which the dismissal was intended to take effect. The Management will pay the benefits accordingly. The workman is not entitled to any other reliefs.

VI. This award shall come into force on the expiry of thirty days from the date of its publication in the Government Gazette.

Ernakulam,
27-4-1982.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witness examined on the Management's side:

MW1 Shri K. K. Sugunan.

Exhibits marked on the Management's side:

Ext. M1. The file containing the domestic enquiry papers.
,, M1(a) Findings of the Enquiry Officer (in Ext. M1 file).
,, M2. Another file containing the papers of the enquiry proceedings.
,, M2(a) Standing Orders.

Exhibits marked on the Union's side:

Ext. W1 Memorandum and Articles of Association of the Travancore Rubber & Tea Company Limited.

Kerala Gazette No. 27 dated 6th July 1982.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 478/82/LBR. *Dated, Trivandrum, 30th April 1982.*

The award of the Labour Court, Ernakulam in respect of the dispute between the President, Thalappalam Service Co-operative Bank Ltd. No. 3937, Thalappalam, Meenachil Taluk and the workman of the above concern viz. Sri Karlos Mathew, Palanilkumkala, Thalappalam, Plassanal P. O., Meenachil Taluk received by Government on 29-4-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
P. GOMATHY AMMA,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Dated this the 24th day of April, 1982

Present:

SHRI N. SUKUMARAN, B. SC., B. L.,
Presiding Officer

In

INDUSTRIAL DISPUTE No. 103 OF 1980

Between

The President, Thalappalam Service Co-operative Bank Ltd. No. 3937, Thalappalam, Meenachil Taluk

And

The workman of the above concern viz., Sri Karlos Mathew, Palanilkumkala, Thalappalam, Plassanal P. O., Meenachil Taluk

Representations:

Shri Zachariah Koshy,
Advocate,
Kottayam. } For *Management.*

Shri M. J. Thomas,
Advocate,
Kottayam. } For *Workman.*

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 1522/80/LBR dated 29-10-1980 is "Dismissal of Sri Karlos Mathew".

2. The dismissal was in 1971. In between that dismissal and the date of reference the dismissed workman approached various authorities seeking the relief of reinstatement. In the first instance he filed a suit before the Civil Court which was dismissed for the reason that it was not maintainable. Thereupon he approached the Co-operative Department where also he met the same fate. Thereafter he moved the Labour Department. But there it was rejected on the ground of inordinate delay. Then he filed an Original Petition before the Hon'ble High Court and as directed therein by the High Court the Conciliation Officer reconsidered the matter and recommended a reference and that is how the case took so much time to come up for adjudication.

3. Shri Karlos Mathew was a Watcher-cum-Part-time Sweeper of the Management Service Co-operative Bank (hereinafter referred to as the Bank) and he was being paid a salary of Rs. 65. The Bank relieved himself of the duty of Watchman consequent on the Bank insuring itself and his salary was reduced to Rs. 45 in February 1971. He accepted the reduced rate of salary on recording in the acquittance roll that the payment was received under protest. This was treated by the Bank as a misconduct and disciplinary proceedings were initiated against him. There was some sort of enquiry during which also the incumbent is alleged to have committed further misconducts. Finally he was dismissed.

4. The complaint of the workman is that he is an innocent victim deserving the relief of reinstatement with all benefits. It is further said that there was no proper or valid domestic enquiry before the dismissal.

5. The Management Bank contends that the workman was really guilty of grave acts of misconduct deserving the punishment. It is further contended that he was only a name lender as a Sweeper and actually the work was being carried out by his wife. There is also a contention that disciplinary proceedings were properly initiated and the workman was given an opportunity to be heard before the punishment was inflicted.

6. It was conceded before me that there was no proper domestic enquiry as such and that there was only some sort of an investigation into the charges by some of the members of the Director Board of the Society and therefore it is unnecessary to consider the validity of the enquiry held on a preliminary basis. The Bank offered to adduce evidence before this Court on the charges and the evidence was let in accordingly. That evidence consists of the testimony of two witnesses and Exts. M1 to M5. The workman gave evidence as WW1. He had also marked Exts. W1 to W11.

7. Now we have to see as to whether the Management had succeeded in establishing the misconducts attributed to the workman. Ext. M3 is the

formal charge. It contains as many as five items of misconducts. They are the following:—

(i) Recording "under protest" in the acquittance roll on 27-2-1971.

(ii) The date was recorded deliberately as 2-2-1971 instead of 27-2-1971.

(iii) Threatening to repeat the misconduct as per item No. i above.

(iv) Disobedience of a lawful direction of the Secretary on 6-6-1970 and

(v) Absence without leave on 6-2-1971.

Ext. W4 is an explanation submitted by WW1. Therein he had admitted of having recorded his protest in the acquittance roll. He attempted to justify the action by saying that his salary was reduced from Rs. 65 to 45 when as a matter of fact the general body had recommended an increase to Rs. 100 per mensem and therefore he bona fide believed that his interest will be jeopardised if he did not make a record of his objection to the reduction at the earliest opportunity. He denied the allegation that he had threatened to repeat such procedure in future also but said that he was only expressing his intention to prosecute his claim for getting his salary without any reduction. It was admitted that the date was put as 2-2-1971. But there he said that it was only a clerical error inadvertently made. Regarding item No. 4 he said that it was not his duty to transport the spraying machine and the accessories as was directed by the Secretary on 6-6-1970. Regarding item No. 5 the explanation was that his wife was present as usual for duty on 6-2-1971 and she was not permitted to carry out the sweeping as was done before.

8. From the explanation it is clear that the facts are almost admitted except the allegations under item No. 3 of the charge. Ext. W11 is a copy of the resolution of the general body wherein it was decided to enhance the salary of the Watchman-cum-Sweeper to Rs. 100 per mensem. On the same day there was another resolution to insure the assets of the Bank. It is the admitted case that the insurance cover was secured. Because of that development it was unnecessary to have a Watchman. So the Bank had no occasion to implement Ext. W11 resolution. Instead it on 22-1-1977 relieved Shri Karlos Mathew of his duty as Watchman as per Ext. M1 order. There it was said that he will thereafter be paid Rs. 45 as part-time Sweeper's wages per mensem. The complaint of the workman is that his wages were reduced without any reasons and he therefore had a genuine complaint which he had raised as a protest recording it in the only available document the acquittance roll. In the background stated the workman who expected an increase in his emoluments was really given a reduction. It is true that the Bank had justifiable reasons to effect the reduction. But we have to visualise the sentiment of the workman when he was monetarily affected at a time when he genuinely expected a rise. The fact that he expressed his protest by recording the same in the acquittance roll cannot. therefore, be taken as a serious misconduct. The evidence of the

two witnesses examined on the side of the Management do not throw any further light on this matter. In these state of affairs I have no hesitation to hold that the workman did not commit any serious misconduct meriting a disciplinary action and a punishment. Of course it may be said that the workman should have restrained himself and adopted other means to express his grievances and get it redressed. Apart from that no misconduct can be attributed on account of the action which is the subject matter of item No. 1 of the charge.

9. Item No. 2 relates to an innocent mistake while giving the date. The Society was not in any way affected by the mistake. The workman could not have gained anything by deleting the figure 7 from the date. So item No. 2 of the charge is also no misconduct.

10. There is nothing to show that the workman threatened to repeat the performance of protest. We have got Exts. M2, M5 and M5 (a) which are the records concerning the preliminary investigation into the first item of the charge. The workman was there asked whether he will repeat the recording of his protest in the acquittance roll. He did not answer in the affirmative. He only said that he will pursue his attempts to establish his rights if they are not conceded. There is nothing else to show that he threatened to repeat the same performance. There is no fresh evidence on this aspect. So that charge is also not established.

11. Admittedly the workman was only a Watcher-cum-Sweeper. So it was not his duty to transport the machinery and its accessories. Hence the disobedience of such a direction which is the subject matter of item No. 4 of the charge, does not amount to a misconduct.

12. It is the admitted case that the workman's wife was performing the sweeping work. His wife was present to perform that duty on 6-2-1971. So the absence of the workman on that day without specific instructions that the workman himself should attend to the duty cannot at any rate be treated as a basis for punishment.

13. From what has been stated above it follows that the charges against the workman are not established. So I find that the workman is not guilty of any misconduct.

14. Now remains the question of reliefs to which the workman is entitled. Normally a workman dismissed without sufficient reason is entitled to reinstatement. But the learned counsel appearing on behalf of the Bank vehemently argued before me that reinstatement should not be ordered in the peculiar circumstances of this case. One argument is that there was inordinate delay and the Bank having made alternate arrangements for performance of the work will face with serious consequences if those arrangements are upset. But this is not a case where the workman was sleeping over his rights. He was very vigilant in prosecuting his claim for reinstatement right from the beginning. Unfortunately it happened that he chose the wrong forums. It is said by the Hon'ble High Court that there was no intentional delay on the part of the workman in raising the industrial dispute.

before the concerned authorities. So there is no delay and the claim cannot be treated as a stale one while considering the question of reliefs.

15. This is a case where Shri Karlos Mathew admittedly was not attending to the sweeping work. It is in evidence as could be seen from Exts. M2, M5 and M5 (a) that he was attending to other works and his wife alone was doing the sweeping. Sweeping is only a part-time job. This worker having other work to do must naturally have been earning otherwise and so he cannot be granted the benefits of full back wages. Fifty percent of the back wages will be adequate in the circumstances. Regarding reinstatement also I feel that Shri Karlos Mathew who has other work of his own will not really be benefited by reinstatement if the Bank insists that he should himself perform the duty. In the light of the strained relationship we cannot expect the Bank to permit a proxy to do his work. So compensation in lieu of reinstatement will be beneficial to the parties.

16. Now the rate of back wages and the quantum of compensation are to be fixed. We have to remember that the whole dispute arose on account of the reduction in emoluments. The reduction was justified as the major item of the Watchman's duty was not available for performance. The time and energy required for the part-time Sweeper's job was comparatively less than that of the Watchman's duty. So the fixation of Rs. 45 when the consolidated amount was recommended at Rs. 100 is reasonable. So back wages has to be calculated fixing the monthly wages at Rs. 45. Back wages till this date at fifty percent of that amount from 17-3-1971, the date from which the dismissal was made effective in Ext. M4 order comes to (22.50 x 12 x 11 plus Rs. 22.50) Rs. 2,992.50. Shri Karlos Mathew was serving this Bank from 1962. He is now 47. Considering all these aspects of the case I fix Rs. 3,000 as compensation in lieu of reinstatement and other benefits.

17. In the result an award is passed directing the Management Bank to pay the worker a sum of Rs. 5,992.50 (Rupees five thousand nine hundred and ninety two and paise fifty only) with interest thereon at the rate of twelve percent from the date on which the award becomes enforceable. The workman will not be entitled to any other reliefs.

18. This award shall come into force on the expiry of thirty days from the date of its publication in the Government Gazette.

(Camp) Munnar,
24-4-1982.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witnesses examined on the Management's side:

MW1. Shri V. V. Devasya
MW2. ,, V. S. Kuttappan

Witness examined on the Workman's side:

WW1. Shri Karlos Mathew.

Exhibits marked on the Management's side:

Ext. M1. Copy of decision No. 417 of the Director Board meeting of the Bank held on 22-1-1971.
,, M2. The questions asked to Shri Karlos Mathew on 22-4-1971 by the Director Board and his answers for the same.
,, M3. Copy of charge-sheet dated 30-4-1971 issued to Shri Karlos Mathew.
,, M4. Copy of decision No. 597 of the Director Board meeting held on 11-5-1971.
,, M5. Answers of Shri Karlos Mathew to the questions by the President, dated 11-3-1971.
,, M5(a) The questions of the President asked to Shri Karlos Mathew on 11-3-1971.

Exhibits marked on the Workman's side:

Ext. W1. A letter dated 16-3-1971 from the Asst. Registrar of Co-operative Societies, Palai to Shri Karlos Mathew regarding reduction in his wages.
,, W2. A letter dated 31-12-1976 from the Deputy Registrar of Co-operative Societies, Kottayam to Shri Karlos Mathew regarding his dismissal.
,, W3. A letter dated 14-6-1976 do. do.
,, W4. Explanation given by Shri Karlos Mathew to the charges on 6-5-1971.
,, W5. Copy of a petition dated 20-3-1971 submitted before the Director Board of the Bank by Shri Karlos Mathew.
,, W6. Copy of a statement submitted before the Bank on 4-3-1971 by Shri Karlos Mathew.
,, W7. Copy of a petition submitted before the Bank by Shri Karlos Mathew on 10-3-1971.
,, W8. A communication dated 22-3-1971 from the Secretary of the Bank to Shri Karlos Mathew informing him of the decision of the Board on his application dated 20-3-1971.
,, W9. Order of the Munsiff Court of Palai dated 22-12-1972 in O. P. No. 28 of 1971.
,, W10. Certified copy of the judgement of the Kerala High Court in O. P. No. 2482/77K.
,, W11. Copy of decision No. VII of the Annual General Body Meeting held on 25-10-1970.

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (Transport-C) Department

NOTIFICATION

No. 2432/TC2/82/TF&P. *Dated, Trivandrum*, 11*th May* 1982.

S. R. O. No. 833/82.—Whereas representation has been received by Government from the Stage Carriage Operator Sri M. K. Sadanandan, Muchan House, Town Railway Station Road, Cochin-18 that the vehicle tax for the quarters ended on the 31st March, 1981 and 31st March 1982 in respect of the Stage Carriage bearing Registration Number KRE. 2194 could not be remitted within the prescribed period due to financial strain and that extension of time for payment of Vehicle tax in respect of the vehicle may, therefore, be granted;

And whereas, the Government are convinced that circumstances existed that the operator of the said stage carriage could not remit the vehicle tax in respect of the said stage carriage ordinarily kept for use in the State for the quarters ended on the 31st March, 1981 and 31st March, 1982 due to financial strain;

And whereas, the Government are convinced that non operation of the said stage carriage due to non-payment of tax would have caused great inconvenience to the travelling public;

And whereas, the Government consider it necessary to extend in public interest the time for payment of the vehicle tax for the quarters ended on the 31st March, 1981 and 31st March, 1982 in respect of the said stage carriage;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that the vehicle tax for the quarters ended on the 31st March, 1981 and 31st March 1982 in respect of the said stage carriage ordinarily kept for use in the State shall be paid within three weeks from 30th January, 1981 together with additional tax payable under section 12 of the Kerala Motor Vehicles Taxation Act, 1976 read with the notification (5) No. 33942/TC2/75-5/PW. dated the 29th September, 1975 published as S. R. O. No. 876/75 in the Kerala Gazette Extraordinary No. 572 dated the 29th September, 1975.

By order of the Governor,

P. SANKARAN NAIR,

Additional Secretary to Government.

[P.T.O.]

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification.)

Government have received certain representation from the Stage Carriage Operator as shown in the notification requesting extension of time for payment of vehicle tax for the quarters ended 31st March, 1981 and 31st March, 1982 due to financial strain;

Government are convinced of the position and in public interest, grant extension of time for payment of tax as otherwise the vehicle might be put out of operation for non-payment of tax causing great inconvenience to the travelling public.

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (Transport C) Department

NOTIFICATION

No. 1983/TC2/82/TF&P. *Dated, Trivandrum, 17th April* 1982.

S. R. O. No. 834/82.—Whereas representations have been received by Government from the Stage Carriage Operators specified in the annexure to this notification, that the vehicle tax for the quarter ended on the 30th September 1981 in respect of the stage carriages particulars of which are specified in the said annexure could not be remitted within the prescribed period due to financial strain and that extension of time for payment of vehicle tax in respect of these vehicles may, therefore, be granted;

And whereas, the Government are convinced that circumstances existed that the operators of the said stage carriages could not remit the vehicle tax in respect of the said stage carriages ordinarily kept for use in the State for the quarter ended on the 30th September 1981 due to finaicial strain;

And whereas, the Government are convinced that non-operation of the said stage carriages due to non-payment of tax would have caused great inconvenience to the travelling public;

And whereas, the Government consider it necessary to extend in public interest the time for payment of the vehicle tax for the quarter ended on the 30th September 1981 in respect of the said stage carriages;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that the vehicle tax for the quarter ended on the 30th September, 1981 in respect of the said stage carriages ordinarily kept for use in the State shall be paid within three weeks from 30th January, 1982 together with additional tax payable under section 12 of the Kerala Motor Vehicles Taxation Act, 1976 read with the notification (-5) No. 33942/TC/75-5/PW. dated the 29th September, 1975 published s S. R. O. No. 876/75 in the Kerala Gazette Extraordinary No. 572 dated the 29th September 1975.

ANNEXURE

Sl. No.	Name of Stage Carriage Operator	Registration No. of the Stage Carriage
1.	Shri A. V. Purushothama Shenoi, Pallipuram Karayil, Anjeelaparambu, Cochin, Ernakulam	KLF.1283
2.	Shri. V. V. Antony, Valiya Veetil, Pallipuram, Manambamkarayil, Cochin, Ernakulam.	KRF.4426
3.	Smt. P. A. Sophy, Kalathi Parambil, Cherai Karayil Pallippuram, Cochin, Ernakulam	KLQ. 3803

By order of the Governor,

P. SANKARAN NAIR,

Additional Secretary to Government.

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification.)

Government have received certain representations from the Stage Carriage Operators as shown in the annexure requesting extension of time for payment of vehicle tax for the quarter ended 30th September, 1981 due to financial strain.

Government are convinced of the position and in public interest, grant extension of time for payment of tax as otherwise these vehicles might be put out of operation for non-payment of tax causing great inconvenience to the travelling public.

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (Transport-C) Department

NOTIFICATION

No. 3158/TC2/82/TF&P. *Dated, Trivandrum, 23rd April* 1982.

S. R. O. No. 835/82.—Whereas representation has been received by Government from the Managing Partner, Girija Motor Service, Cholapurath Building R. C. Road, Kozhikode Stage Carriage Operator that the vehicle tax for the quarter ended on the 31st December, 1979 and 31st March, 1980 in respect of the Stage Carriage bearing Registration Number KLZ. 331 could not be remitted within the prescribed period due to financial strain and that extension of time for payment of vehicle tax in respect of this vehicle may, therefore, be granted;

And whereas, the Government are convinced that circumstances existed that the operator of the said stage carriage could not remit the vehicle tax in respect of the said stage carriage ordinarily kept for use in the State for the quarter ended on the 31st December, 1979 and 31st March, 1980 due to financial strain;

And whereas, the Government are convinced that non-operation of the said stage carriage due to non-payment of tax would have caused great inconvenience to the travelling public;

And whereas, the Government consider it necessary to extend in public interest the time for payment of the vehicle tax for the quarter ended on the 31st December, 1979 and 31st March, 1980 in respect of the said stage carriage;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that the vehicle tax for the quarter ended on the 31st December, 1979 and 31st March, 1980 in respect of the said stage carriage ordinarily kept for use in the State shall be paid within three weeks from 10th February, 1982 together with additional tax payable under section 12 of the Kerala Motor Vehicles Taxation Act, 1975 read with the notification (5) No. 33942/TC2/75-5/PW. dated the 29th September, 1975 published as S. R. O. No. 876/75 in the Kerala Gazette Extraordinary No. 572 dated the 29th September, 1975.

By order of the Governor,
P. SANKARAN NAIR,
Additional Secretary to Government.

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification).

Government have received representation from the Stage Carriage Operator requesting extension of time for payment of vehicle tax for the quarter ended on 31st December, 1979 and 31st March, 1980 due to financial strain;

Government are convinced of the position and in public interest, grant extension of time for payment of tax as otherwise the vehicle might be put out of operation for non-payment of tax causing great inconvenience to the travelling public.

GOVERNMENT OF KERALA

Local Administration and Social Welfare (D) Department

WITHDRAWAL NOTIFICATION

G O. (Ms) 79/82/LA&SWD. *Dated, Trivandram, 24th April* 1982.

S. R. O. No. 836/82.—Under subsection (1) of section 52 of the Kerala Land Acquisition Act, 1961 (21 of 1962) the Government of Kerala hereby withdraw from the acquisition of the lands mentioned in the Schedule hereto annexed in respect of which land acquisition proceedings were initiated by the Special Tahsildar, (Land Acquisition), Tellicherry, by the issue of Notification No. A.836/80 dated the 29th July, 1980 under subsection (1) of section 3 thereof published at page 2 in Part III (Supplement) of the Kerala Gazette No. 43 (supplement) dated the 28th October, 1980.

SCHEDULE

District—Cannanore.

Taluk and Municipality—Tellicherry. *Village*—Tellicherry.

Desom—Vadikkakam

Ward—III *Block*—4

T. S. No.—140/? Pt.
Description—R S C. Wet
Extent.—1600 (*in sq. mtr.*)

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

In July, 1980, the Special Tahsildar (LA), Tellicherry, had initiated acquisition proceedings for the acquisition of lands mentioned in the schedule to the above notification for the construction of Arts Theatre in the Municipal area. The Commissioner, Tellicherry Municipality, has requested to withdraw the acquisition proceedings as the land is not required for the purpose. The notification is intended to achieve the above object.

എസ്. ആർ. ഒ. നമ്പർ 836/82.—1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്ററ് (1962-ലെ 21) 52-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പു പ്രകാരം കേരള സർക്കാർ ഇതോടൊന്നിച്ചു ചേർത്തിട്ടുള്ള പട്ടികയിൽ പറഞ്ഞിട്ടുള്ളതും 1980 ഒക്ടോബർ 28-ാം തീയതിയിലെ കേരള ഗസററ് 3-ാം ഭാഗം (അനുബന്ധം) 2-ാം പേജിൽ പ്രസിദ്ധപ്പെടുത്തിയ പ്രസ്തുത ആക്ററ് 3-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പുപ്രകാരമുള്ള 1980 ജൂലൈ 29-ാം തീയതി

യിലെ എ. 836/80 എന്ന നമ്പർ വിജ്ഞാപനം പുറപ്പെടുവിച്ചുകൊണ്ട് തലശ്ശേരി (ലാൻറ് അക്വിസിഷൻ) സ്പെഷ്യൽ തഹസീൽദാർ സ്ഥലമെടുപ്പു നടപടികൾ ആരംഭിച്ചിട്ടുള്ളതുമായ സ്ഥലം വിലയ്ക്കെടുക്കുന്നതിൽ നിന്നും ഇതിനാൽ പിൻവാങ്ങുന്നു.

പട്ടിക

ജില്ല—കണ്ണൂർ.

താലൂക്കും മുനിസിപ്പാലിററിയും—തലശ്ശേരി   വില്ലേജ്—തലശ്ശേരി.

ദേശം—വാടിയ്ക്കകം.

വാർഡ്—3.   ബ്ലോക്ക്—4.

ടി. എസ്. നമ്പർ 140/2 പി. ററി.
വിവരണം—ആർ. എസ്. സി. നിലം
വിസ്തീർണ്ണം—1600 (ച: മീററർ)

വിശദീകരണക്കുറിപ്പ്

(ഇത് വിജ്ഞാപനത്തിന്റെ ഭാഗമല്ല, എന്നാൽ അതിന്റെ പൊതു ഉദ്ദേശം സൂചിപ്പിക്കുന്നതിനുദ്ദേശിച്ചുള്ളതാണ്.)

1980 ജൂലൈ മാസം തലശ്ശേരി (ലാൻറ് അക്വിസിഷൻ) സ്പെഷ്യൽ തഹസീൽദാർ മുനിസിപ്പൽ പ്രദേശത്തു ആട്സ് തീയേററർ നിർമ്മിക്കുന്നതിനുവേണ്ടി മേൽപ്പറഞ്ഞ വിജ്ഞാപനത്തിന്റെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള ഭൂമി വിലയ്ക്കെടുക്കുന്നതിനുള്ള നടപടികൾ ആരംഭിച്ചിട്ടുണ്ടായിരുന്നു. ഈ ആവശ്യത്തിനു ഭൂമി ആവശ്യമില്ല എന്നുള്ളതുകൊണ്ട് സ്ഥലമെടുപ്പു നടപടികൾ പിൻവലിക്കണമെന്ന് തലശ്ശേരി മുനിസിപ്പൽ കമ്മീഷണർ അഭ്യർത്ഥിച്ചിരിക്കുന്നു. പ്രസ്തുത ആവശ്യം നിറവേററുന്നതിനുദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ് ഈ വിജ്ഞാപനം.

By order of the Governor,

MARC C. JOHN,

Deputy Secretary to Government.

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (Transport C) Department

NOTIFICATION

No. 1847/TC2/82/TF&P. *Dated, Trivandrum,* 23*rd April* 1982.

S. R. O. No. 837/82—Whereas representation has been received by Government from the Stage Carriage Operator Shri Alex George, Madathil House, Thangassery, Quilon that the vehicle tax for the quarter ended on the 31st March, 1982 in respect of the Stage Carriage bearing Registration Number KLF. 2674 could not be remitted within the prescribed period due to financial strain and that extension of time for payment of vehicle tax in respect of this vehicle may, therefore, be granted;

And whereas, the Government are convinced that circumstances existed that the operator of the said stage carriage could not remit the vehicle tax in respect of the said stage carriage ordinarily kept for use in the State for the quarter ended on the 31st March, 1982, due to financial strain;

And whereas, the Government are convinced that non-operation of the said stage carriage due to non-payment of tax would have caused great inconvenience to the travelling public;

And whereas, the Government consider it necessary to extend in public interest the time for payment of the vehicle tax for the quarter ended on the 31st March, 1982 in respect of the said stage carriage;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976); read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that the vehicle tax for the quarter ended on the 31st March, 1982 in respect of the said stage carriage ordinarily kept for use in the State shall be paid within two weeks from 25th January, 1982 together with additional tax payable under section 12 of the Kerala Motor Vehicles Taxation Act, 1976 read with the notification (5) No. 33942/TC2/75-5/PW. dated the 29th September, 1975 published as S. R. O. No. 876/75 in the Kerala Gazette Extraordinary No. 572 dated the 29th September, 1975.

By order of the Governor,

P. SANKARAN NAIR,

Additional Secretary to Government.

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification)

Government have received representation from the Stage Carriage Operator as shown in the annexure requesting e x t e n s i o n of time for payment of vehicle tax for the quarter ended 31st March, 1982 due to financial strain ;

Government are convinced of the position and in public interest, grant extension of time for payment of tax as otherwise these vehicles might be put out of operation for non-payment of tax causing great inconvenience to the travelling public.

GOVERNMENT OF KERALA

Transports, Fisheries and Ports (Transport-C) Department

NOTIFICATION

No. 4693/TC2/82/TF&P. *Dated, Trivandram, 7th June* 1982.

S. R. O. No. 838/82.—Whereas representation has been received by Government from the Stage Carriage Operator Shri Jacob James, Vadakkan House, Mundakkal P. O., Palai that the vehicle tax for the quarter ended on the 31st March, 1982 in respect of the Stage Carriage bearing Registration No. KLE. 8100 could not be remitted within the prescribed period due to financial strain and that extension of time for payment of vehicle tax in respect of this vehicle may, therefore, be granted;

And whereas, the Government are convinced that circumstances existed that the operator of the said stage carriage could not remit the vehicle tax in respect of the said stage carriage ordinarily kept for use in the State for the quarter ended on the 31st March, 1982 due to financial strain;

And whereas, the Government are convinced that non-operation of the said stage carriage due to non-payment of tax would have caused great inconvenience to the travelling public;

And whereas, the Government consider it necessary to extend in public interest the time for payment of the vehicle tax for the quarter ended on the 31st March, 1982 in respect of the said stage carriage;

Now, therefore, in exercise of the powers conferred by section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), read with rule 5 of the Kerala Motor Vehicles Taxation Rules, 1975, the Government of Kerala hereby order that the vehicle tax for the quarter ended on the 31st March 1982 in respect of the said stage carriage ordinarily kept for use in the State shall be paid within one month from the 26th February, 1982 together with additional tax payable under Section 12 of the Kerala Motor Vehicles Taxation Act, 1976 read with the Notification (5) No. 33942/TC2/75-5/PW. dated the 29th September, 1975 published as S. R. O. No. 876/75 in the Kerala Gazette Extraordinary No. 572 dated the 29th September, 1975.

By order of the Governor.

P. SANKARAN NAIR,

Additional Secretary to Government.

G. 926 [P.T.O.]

Explanatory Note

(This is not part of the notification, but is intended to indicate the main purpose of the issue of the notification.)

Government have received representation from the Stage Carriage Operator as shown in the notification requesting extension of time for payment of vehicle tax for the quarters ended on 31st March, 1982 due to financial strain;

Government are convinced of the position and in public interest, grant extension of time for payment of tax as otherwise the vehicle might be put out of operation for non-payment of tax causing great inconvenience to the travelling public.

GOVERNMENT OF KERALA

Transport, Fisheries & Ports (Transport–B) Department

NOTIFICATION

G.O. Rt. No. 393/82/TF & P. *Dated, Trivandrum, 30th April* 1982

S. R. O. No. 840/82.—Whereas the Managing Partner M/s. K. K. Menon Motor Service, Anthikad, Trichur has constructed a bus body on an Ashok Leyland cheetah chassis the details of which are hereunder given; for plying it as a Stage Carriage on routes covered by ghat roads also ;

And whereas, the overall length and overhang of the vehicle exceeds the limits prescribed under sub-rule (2) of rule 267 and rule 294 respectively of the Kerala Motor Vehicles Rules, 1961.

And whereas, the Government of Kerala are satisfied that the said vehicle can conveniently be used as a stage carriage with such excess measurements in overall length and overhang;

Now, therefore, in exercise of the powers conferred by rule 368 of the Kerala Motor Vehicles Rules, 1961, the Government of Kerala hereby exempt the said vehicle from the provisions of sub-rule (2) of rule 267 and rule 294 of the said Rules.

DETAILS OF THE VEHICLE

Maker's name	..	Ashok Leyland
Type of body	..	Saloon
Class of vehicle	..	stage carriage
Engine No.	..	ALI. 123110
Chassis No.	..	ALD 139140
Wheel base	..	533.4 centimetres
Overall length	..	989.2 centimetres
Over hang	..	60% of the wheel base
Seating capacity	..	43 in all

By order of the Governor,

P. SANKARAN NAIR,

Additional Secretary to Government.

[P. T. O.]

Explanatory Note

(This is not part of the notification, but is intended to indicate its general purport).

The Managing Partner M/s. K. K. Menon Motor Service, Anthikad, Trichur has requested Government to exempt the vehicle mentioned in the above notification from the provisions of sub-rule (2) of rule 267 and rule 294 of the Kerala Motor Vehicles Rules, 1961 as the overall length and overhang of the vehicle exceeds the prescribed limits. Government have considered the request in consultation with the Transport Commissioner and have decided to grant the exemption sought. Hence this notification.

Kerala Gazette No. 27 dated 6th July 1982.
PART I **Section iv**



GOVERNMENT OF KERALA

Taxes (F) Department

NOTIFICATION

G. O. (P). 36/82/TD. *Dated, Trivandrum, 14th May* 1982.

S.R.O.No. 841/82.—In exercise of the powers conferred by subsection (1) of section 2 of the Kerala Public Services Act, 1968 (19 of 1968), the Government of Kerala hereby make the following amendments to the Special Rules for the Kerala Excise and Prohibition Subordinate Service, published under Notification No. G.O. (P) 112/74/TD dated the 9th September, 1974, as S.R.O. No. 689/74, in Part I of the Kerala Gazette No. 39 dated the 24th September, 1974, as subsequently, amended, namely:—

AMENDMENTS

In the said rules:—

(1) In rule 5 in column (3) of the Table, the qualification specified for promotion to the category "1. Excise Inspector" in column (1), shall be numbered as item (1) and after item (1) so numbered the following item shall be inserted, namely:—

"(2) Must have put in a minimum of three years satisfactory service in office, and a minimum of two years' satisfactory service in the field while in the category of Preventive Officer.

Note:—Postings of persons in category 2 to the office or the field will be made in such a way that a senior person may not lose his eligibility for promotion, on applying the condition as to the period of experience in field or office. If the turn for promotion of a senior officer in the feeder category comes before he acquires the minimum period of service in the office or field owing to the fact that such a person has not been given an opportunity for acquiring the service, such officer shall be exempt from acquiring the experience in the office or field, as the case may be".

The persons appointed as Preventive Officers shall be required to work in the office during the period of their probation and that they may be posted for field duty only after the period of their probation.

(2) (i) in rule 6, in the Table under sub-rule (1), in column (2)–

(a) in the entries against the category

"Excise Inspectors", after item (2) the following item shall be inserted, namely:—

(3) "District Office Manual

Or

Manual of Office Procedure",

(b) the entry against the category.

"Excise Preventive Officer", shall be numbered as item (1), and after item (1) so numbered the following item shall be inserted, namely:—

"(2) District Office Manual;

Or

Manual of Office Procedure".

Note;—Two years or four chances shall be given for the officers to pass the Departmental Tests viz. Manual of Office Procedure or District Office Manual from the date of issue of the orders.

(ii) in the Table, under sub-rule (2) in column (2) in the entries against the category "Excise Inspectors", after item (2) the following item shall be inserted, namely:—

"(3) District Office Manual;

Or

Manual of Office Procedure".

By order of the Governor,
N. Krishnan Nair,
Special Secretary to Government.

Explanatory Note

(This is not part of the notification, but is intended to explain its general purport).

At present, it is not obligatory on the part of the Excise Personnel to acquire experience in office work. To make them proficient in office work, it has been decided to make it obligatory for Preventive Officers to work for a minimum period of 3 years in the office and 2 years in the field and to pass the test in Manual of Office Procedure or District Office Manual. The notification is intended to achieve the above object.

Kerala Gazette No. 27 dated 6th July 1982.
PART I Section iv

GOVERNMENT OF KERALA

Home (C) Department

NOTIFICATION

G.O. (Ms) No. 65/82/Home. *Dated, Trivandrum, 5th May* 1982.

S. R. O. No. 842/82.—In exercise of the powers conferred by sub-section (1) of section 2 of the Kerala Public Service Act, 1968 (19 of 1968), the Government of Kerala hereby make the following rules to amend the Sheristadars (District Courts, State Transport Appellate Tribunal and District Magistrate's Courts Recruitment Rules published under notification G.O. (P) No. 272/74/PD dated the 11th November, 1974 [as S.R.O. No. 942/74 in Part I of the Kerala Gazette No, 52 dated the 24th December, 1974 namely:—

Rules

1. *Short title.*—These rules may be called the Sheristadars (District Courts, State Transport Appellate Tribunal and District Magistrate's Courts) Recruitment (Amendment) Rules, 1982.

2. *Amendment to the Sheristadars (District Courts, State Transport Appellate Tribunal and District Magistrate's Courts) Recruitment Rules.*—In the Sheristadars (District Courts, State Transport Appellate Tribunal and District Magistrate's Courts) Recruitment Rules,—

(1) for the words "District Magistrates Courts" wherever they occur the words "Chief Judicial Magistrates' Courts" shall be substituted;

(2) In sub-rule (a) of rule 5, in column (2) under the heading 'method of appointment';

(a) for the entries against category 1, the following shall be substituted namely:—

"(i) By transfer from the Sheristadars of Subordinate Judges Courts and Head Clerks of District Courts in Kerala Judicial Ministerial Subordinate Service.

(ii) If no qualified and suitable candidates are available under item (i) above, by transfer from Junior Superintendents of Munsiffs Court in Kerala Judicial Ministerial Subordinate Service;

(iii) If no qualified and suitable candidates are available under items (i) and (ii) above, by direct recruitment".

(b) for the entries against category 2 the following shall be substituted namely:—

"(i) By transfer from Head Clerks of Chief Judicial Magistrates Courts in Kerala Judicial Ministerial Subordinate Service.

(ii) If no qualified and suitable candidates are available under item (i) above, by transfer from Head Clerks of Sub Divisional Judicial Magistrates Courts, Courts of the Judicial Magistrate of the First Class, Munsiff Magistrates Courts (criminal side) and Courts of the Judicial Magistrate of the Second Class and Bench Clerks of Chief Judicial Magistrates Courts in Kerala Judicial Ministerial Subordinate Service.

(iii) If no qualified and suitable candidates are available under items (i) and (ii) above, by direct recruitment".

(3) for rule 7, the following rule shall be substituted namely:—

"7 *Qualification regarding age.*—No person shall be eligible for appointment by direct recruitment if he has completed 31 years of age on the 1st day of January of the year in which applications for appointment are invited:

Provided that the provision for raising the age limit in the case of members of Scheduled Castes, Scheduled Tribes and other Backward Classes, in sub-rule (c) of rule 10 of the Kerala State and Subordinate Service Rules, 1958, shall be applicable to members of Scheduled Castes and Scheduled Tribes and Other Backward Classes".

(4) In the Table under rule 8, in the entries in column (3) under the heading 'qualifications' against category 1, in column (1) for item (ii) the following shall be substituted namely:—

"(ii) Sheristadars Test or Head Clerks Test or Judicial Test or Civil Judicial Test and Criminal Judicial Test (except Medical jurisprudence)

OR

A degree in law of a recognised University".

By order of the Governor,

K. V. VIDYADHARAN,

Special Secretary to Government.

Explanatory Note

The Judicial Magistrates Courts have been redesignated as Chief Judicial Magistrates Courts, Subdivisional Judicial Magistrates Courts, Courts of the Judicial Magistrates of the First Class and Courts of the Judicial Magistrates of the Second Class with the introduction of the new Criminal Procedure Code 1973. Consequential changes are considered necessary in the Sheristadars (District Courts, State Transport Appellate Tribunal, District Magistrates) Recruitment Rules also.

As a result of the last pay revision, most of the posts of Head Clerks in Munsiff's Courts have been upgraded as Junior Superintendents and placed in a Higher scale of pay than the few posts of Head Clerks in the Munsiff-Magistrates Courts and Munsiffs Courts (with Single Benches) and the Central Nazirs. Hence it is proposed to include the higher posts of Junior Superintendents of Munsiffs Courts as feeder category for appointment of Sheristadars of the District Courts, State Transport Appellate Tribunal instead of Head Clerks of Munsiffs Courts and Central Nazirs.

High Court has recommended that Head Clerks Test may also be prescribed as one of the alternative tests for Sheristadars of District Courts and State Transport Appellate Tribunal, as in the case of Sheristadars of Chief Judicial Magistrate Courts (formerly District Magistrate Courts). They are expected to pass Criminal Judicial Test (Excluding Medical Jurisprudence) also, in as much as the District Courts handle sessions cases as well. These tests have also to be included among the tests/qualifications prescribed for Sheristadars of District Courts and State Transport Appellate Tribunal.

The Committee on Subordinate Legislation has recommended inter-alia that provision has to be incorporated in the rules for the usual relaxation of age applicable to Scheduled Castes, Scheduled Tribes and Other Backward Communities.

The notification is intended to achieve the above objects.